IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL APPLICATION NO.2953 OF 2006
IN
WRIT PETITION NO.1995 OF 1990

M.K. Dhusane .... Petitioner
Vs.
Smt. M.H. Choudhary, since deceased, by her LRs
Suresh H. Choudhary & Ors. .... Respondents

Sarvasri S.S. Swadi h/f S.G. Deshmukh for the Petitioner/Applicant.

Sarvasri Rajesh Kachare h/f Sandesh Deshpande for the Respondents/Opponents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 15, 2006

P.C:

None present. Dismissed for default.

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1. Taken up on board on request.

2. When the matter was called out in the morning session, none had appeared for the applicant and, therefore, the same was dismissed for default. In the afternoon session, the learned Advocate for the applicant submitted that he was held up in another Court at the relevant time and, therefore, he could not appear before this Court when the matter was called out and

dismissed.

3. Upon hearing the learned Advocates for the applicant and the opponents, the order passed in the earlier part of the day dismissing the application is hereby recalled and the application is restored to the board.

4. As regards the order dated 29-8-2006 by which the Writ Petition No.1995 of 1990 was dismissed, the sole contention on behalf of the applicant is that the Advocate for the petitioner was sick on the relevant day and therefore could appear before the Court. Apart from the mere statement in the application that the Advocate was sick on the relevant day, no other material is placed on record in support of the claim of sickness of the Advocate on the particular day. Nevertheless, since on account of failure on the part of the Advocate to appear in the Court the party should not be allowed to suffer, I am inclined to recall the order dated 29-8-2006 and to restore the Writ Petition No.1995 of 1990, however, subject to cost of Rs.3,000/-. This cost shall be in addition to the cost of Rs.3,000/-, directed to be paid under the order dated 29-8-2006. There has also been delay of 28 days in filing the present application for restoration. Considering the facts disclosed in the application, the said delay is condoned. However, the same shall be subject to cost in

the application.

5. In the result, the application is partly allowed; the order dated 29-8-2006 is hereby recalled and the Writ Petition No.1995 of 1990 is restored to the board along with the interim relief which was granted in the said Writ Petition on 4-5-1990. The direction for payment of cost under the order dated 29-8-2006 is, however, not interfered with and, in addition, the applicant shall pay further cost of Rs.3,000/-, that is total cost of Rs.6,000/- should be paid within eight days to the Legal Services Authority of this Court, failing which the order passed today shall automatically stand recalled and the application shall stand dismissed, without being referred to the Court. The application stands disposed of.

(R.M.S. Khandeparkar, J.)

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